

1 Petitioner's motion was timely mailed with the Original to the Commission
2 and copies to recipients according to the rule. In addition, a complimentary
3 copy was emailed to everyone.

4 Petitioner's attorney specifically cited (at the top of the Motion) the
5 Rule providing Service by Mail of the Motion met the deadline. The
6 Commission is not at liberty to change its rules by interpretation of Order
7 No. 7084e. That is true especially in light of the fact that 10 days is a very
8 short time and service by mail to Colorado where Petitioner's attorney lives
9 eats up a goodly portion of that time. For example, in late afternoon, May
10 14th, Petitioner's attorney received the document NorthWestern mailed on
11 May 10th. In short, if the Commission decides to reject Petitioner's motion
12 on the grounds of untimeliness, it will deny petitioners' due process.

13 **Correction of Order misstatements.** NorthWestern contends that in
14 order to comply with ARM 38.2.4806, petitioners must base their petition on
15 the grounds the original order was "unlawful, unjust, or unreasonable." OK
16 so now instead of being polite in how petitioners phrased their request, we'll
17 use the terms of art. It is "unreasonable" to base an order on a statement of
18 the facts in the case that is just plain wrong. So petitioners want it corrected.

1 If this were a proceeding in Court, under the Montana Rules of Civil
2 Procedure, a court would have no problem with such a correction.¹

3 ARM § 38.2.4806 also provides that if the Order should be changed,
4 the Commission may change it, specifically:

5 (3) Modification of original order. If, after such motion for
6 reconsideration is filed, the commission is of the opinion that the
7 original **order** or decision is **in any respect** unjust or unwarranted, or
8 **should be changed, the commission may** abrogate, **change or**
9 **modify the same.** [Emphasis added]

10
11 **Requests to brief.** NorthWestern contends it should not have to brief
12 the issues requested by petitioners on the basis that such a requirement shifts
13 the burden of proof. Not so. NorthWestern is required to respond or deny
14 certain things alleged in the complaint. Its answers are demonstrably
15 evasive. Therefore, petitioner's request is merely to narrow legal issues
16 involved in the resolution of the case or to clarify facts (that NorthWestern
17 quibbles with about plaintiff's understanding of its procedure). If it is
18 appropriate to require petitioners to narrow those issues by briefing them,
19 then requiring NorthWestern to do likewise is fair, lawful, just, and
20 reasonable.

¹ MRCiv.P, Rule 60. Relief from Judgment or Order.

(a) **Corrections Based on Clerical Mistakes; Oversights and Omissions.** The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record.

1 **Regarding requests to brief paragraphs found in 3h.** It is
2 understandable why NorthWestern is reluctant to admit that it has no good
3 rationale for not allowing use of its poles so that communities with the
4 inclination to switch to LEDs cannot do so conveniently. Petitioners have
5 met their burden of asserting that the US Supreme Court requires otherwise.
6 See *Ottertail Power Company v. US*, 35 L.Ed.2d 359, 93 S.Ct. 1022, 410
7 U.S. 366 (1973) and a lower court ruling in *Ottertail Power Co. v. FPC*, 536
8 F.2d 240 (1976) and their progeny. Therefore, the burden has shifted to
9 NorthWestern to justify its errant behavior.

10 **Regarding requests to brief paragraphs found in 3i.** Likewise, the
11 burden has shifted to NorthWestern to respond forthrightly to Paragraph 25
12 of the Complaint which pled “Montana law requires NorthWestern to use the
13 original cost depreciated method of calculating the value of utility property
14 placed into its utility rate base.” NorthWestern’s answer to that statement
15 was, “NorthWestern states that the law speaks for itself.”

16 If NorthWestern believes that in “speaking for itself,” the law does not
17 require NorthWestern to use the original cost depreciated method of
18 calculating the value of utility property placed into its utility rate base, what
19 authority allows NorthWestern to use a different method for calculating the
20 value of utility property placed into its utility rate base?

1 For gosh sakes, if NorthWestern believes another method of valuing
2 utility property is allowable in the way it treats utility property, the
3 Commission and parties ought to know about it before being blind-sided by
4 application of a different method at trial.

5 **Regarding requests to brief paragraphs found in 3j & 3n.** Similar
6 situations arise whenever NorthWestern says “the law speaks for itself.” It is
7 reasonable to ask NorthWestern to agree to what the law says (as is simply
8 stated in the complaint) or in the alternative to enlightening the Commission
9 and litigants about some other interpretation. To not require NorthWestern to
10 enlighten us meets the ARM requirement of being unjust and unreasonable.

11 **Regarding requests to brief paragraphs found in 3k.** As to
12 NorthWestern’s deflecting the allegation that “A utility or other entity may
13 not avoid reasonable regulation by contract,” by asserting “NorthWestern
14 does not believe a response to this paragraph of the Complaint is required as
15 it is not an allegation of fact, but a legal conclusion. To the extent that the
16 Commission deems an answer to this section of the Complaint necessary,
17 NorthWestern is without sufficient knowledge to admit or deny the
18 statement made and therefore denies the same.”

19 It is curious that with all the fine legal talent at its disposal,
20 NorthWestern would be without sufficient knowledge to know whether “A

1 utility or other entity may not avoid reasonable regulation by contract.” And
2 if it is a legal conclusion at issue, as NorthWestern asserted, then it is
3 NorthWestern’s burden to brief it.

4 **Regarding requests to brief paragraphs found in 3l.** Plaintiffs have
5 done a word search on all street lighting contracts in Billings available to
6 them. On the basis of that and their knowledge of NorthWestern tariffs
7 alleged that NorthWestern’s street lighting contracts with Billings do not
8 contain words relating to rent, etc. NorthWestern responded that some
9 contracts did not contain those words but did not know if others might.
10 Therefore it is reasonable to ask NorthWestern to point out for the
11 Commission any orders or tariffs where NorthWestern has been granted
12 permission to lease or rent street lights that it owns or to admit that all of its
13 contracts do not contain those words. NorthWestern and its new head who
14 previously led this Commission, should know of any such tariff. If none
15 exist, we can deduce from that fact that any contract wording that includes
16 the words “rent” etc. are contracts without proper authorization.

17 **Regarding requests to brief paragraphs found in 3m.**

18 NorthWestern’s answers to the complaint quibble with Petitioner’s
19 understanding of how the ownership charge is calculated and applied.
20 Briefing this issue gives NorthWestern the opportunity to enlighten the

1 Commission and litigants on this critical point. It does not shift the burden; it
2 merely clarifies NorthWestern's answers in a way that helps to put everyone
3 on the same page. This is information that NorthWestern would know more
4 about than anybody.

5 Rather than admit its overcharge, NorthWestern would undoubtedly
6 prefer to keep everyone in the dark about the mechanics surrounding its
7 ownership charge. That may have worked with previous Commissions, but
8 hopefully this one will want to know what is really going on.

9 **Request for an Order to Show Cause.** The detailed complaint in this
10 case is sufficient to support an order to show cause or other expedited
11 proceeding on a temporary rate reduction to stop the approximately
12 \$180,000 a month overcharge being extracted from Montanans by
13 NorthWestern. The utility's due process will be preserved by an order to
14 show cause hearing. Petitioners have been seeking a temporary rate
15 reduction for years. Now it is time for NorthWestern's customers to have
16 due process as well!

17 Respectfully submitted,

18 _____ Monday, May 15, 2013
19 Russell L. Doty, Attorney at Law, Montana State Bar # 2472
20 4957 W 6th St.
21 Greeley, CO 80634-1256
22 Phone: 406-696-2842
23 Email: iwin4u1@earthlink.net
24

CERTIFICATE OF SERVICE

I, Russell L Doty, certify that pursuant to ARM 38.2.313 on May 15, 2013, an accurate copy of the foregoing **Reply to NorthWestern's Opposition to Motion to Reconsider Procedural Order NO. 7084e in Docket No. D2010.2.14** was served upon the parties listed below in the manner provided:

<input checked="" type="checkbox"/> XX US Mail <input type="checkbox"/> Hand-delivery w/ 6 copies <input type="checkbox"/> Via Fax: <input checked="" type="checkbox"/> XX E-mail:	Kate Whitney, Montana Public Service Commission 1701 Prospect Av PO Box 202601 Helena, MT 59620-2601 Email: kwhitney@mt.gov
<input checked="" type="checkbox"/> XX US Mail <input type="checkbox"/> Hand-delivery <input type="checkbox"/> Via Fax: <input checked="" type="checkbox"/> XX E-mail:	Brenda Elias, Montana Public Service Commission 1701 Prospect Av PO Box 202601 Helena, MT 59620-2601 Email: belias@mt.gov
<input type="checkbox"/> XX US Mail <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand-delivery <input checked="" type="checkbox"/> XX E-mail:	Robert A. Nelson, Montana Consumer Counsel 111 North Last Chance Gulch Suite 1B Box 201703 Helena MT 59620-1703 Email: robnelson@mt.gov
<input checked="" type="checkbox"/> XX US Mail <input type="checkbox"/> Hand-delivery <input checked="" type="checkbox"/> XX E-mail:	Sarah Norcott, Esq., Attorney for NorthWestern Energy 208 N Montana Ave., Suite 205 Helena, MT, 59601 Email: sarah.norcott@northwestern.com
<input checked="" type="checkbox"/> XX US Mail <input type="checkbox"/> Hand-delivery <input checked="" type="checkbox"/> XX E-mail:	Leo & Jeanne Barsanti 3316 Pipestone Dr. Billings, MT 59102 Email: leoj47@msn.com
<input checked="" type="checkbox"/> XX US Mail <input type="checkbox"/> Hand-delivery <input checked="" type="checkbox"/> XX E-mail:	James T. & Elizabeth A. Gruba 2527 Wyoming Ave. Billings, MT 59102 Email: jtgruba@hotmail.com
<input checked="" type="checkbox"/> XX US Mail <input type="checkbox"/> Hand-delivery <input checked="" type="checkbox"/> XX E-mail:	Michael W. & Frances E. Paterson 3906 Heritage Billings, MT 59102 Email: montana1man2003@yahoo.com
<input checked="" type="checkbox"/> XX US Mail <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand-delivery <input checked="" type="checkbox"/> XX E-mail:	Nedra Chase NorthWestern Energy 40 E. Broadway Butte, MT 59701-9394 Email: Nedra.Chase@northwestern.com

Russell L. Doty